

DEPARTMENT OF PUBLIC SAFETY

Adoption of Chapter 23-700
Hawaii Administrative Rules

January 1991

1. Chapter 700 of Title 23, Hawaii Administrative Rules, entitled "Hawaii Paroling Authority" is adopted to read as follows:

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HAWAIIAN
RECORDING

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 5

HAWAII PAROLING AUTHORITY

CHAPTER 700

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SUBCHAPTER 1

Hawaii Paroling Authority

23-700-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Authority" means the Hawaii Paroling Authority.

"Administrative review" is a review by the Authority of an inmate's status and adjustment without the presence of the inmate.

"Administrative Secretary" means the Parole and Pardon Administrator or the Administrator's designee.

"Chairperson of the Authority" means the Chairperson of the Authority or the Chairperson's designee.

"Formal decisions of the Authority" means the fixing or reduction of a minimum term of imprisonment, a decision on a request for reduction of minimum term of imprisonment, a pardon or commutation recommendation and granting, denying, revoking, suspending or reinstating parole.

"Hearing" means a formal Authority meeting with an inmate or parolee, and does not include or mean executive sessions or decision-making sessions by the Authority.

"Inmate" means a person committed to the Department of Public Safety with an indeterminate or extended term of imprisonment.

"Interview" is an informal meeting with one or more members of the Authority and an inmate.

"Offense against the person" means any of the offenses described in Chapter 707 of Hawaii Revised Statutes and includes any attempt to commit any of those offenses.

"Parolee" means a person who has been paroled by the Authority who has not served the maximum term of imprisonment, has not been discharged from the sentence, or had parole revoked by the Authority.

"Surviving immediate family member" means a person who is a surviving grandparent, parent, sibling, spouse, child or legal guardian of a deceased victim.

"Victim" means the person who was the victim of the offense against the person for which the inmate or parolee was convicted.

[Eff AUG 22 1992] (Auth: HRS 353-62, 353-65)
(Imp: HRS 353-62, 353-65)

23-700-2 General. (a) The parole system is to protect the community. Protection of the community and reintegration of an inmate into the community is accomplished by fixing an appropriate minimum term of imprisonment, granting or denying parole, revoking parole, and supervising the inmate on parole.

(b) The Authority consists of three persons; one full-time and two part-time members, appointed by the Governor and confirmed by the State Senate. The Authority is an independent quasi-judicial body which, for administrative purposes only, is attached to the Department of Public Safety. Decisions of the Authority are not subject to the approval of the Department of Public Safety.

Formal decisions of the Authority shall not be conclusive and final unless at least two members are in agreement.

[Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-62, 353-65)

SUBCHAPTER 2

MINIMUM SENTENCE

23-700-21 Jurisdiction. Except in cases where an inmate is not eligible for parole, the Authority shall within six months of commitment hold a hearing, and on the basis of the hearing make an order fixing a minimum term of imprisonment.

[Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 706-669)

23-700-22 Procedure for fixing of minimum term. (a) An inmate shall be given at least seven calendar days written notice of the hearing for the fixing of the minimum term.

(b) An inmate shall be permitted to be assisted and represented by counsel at the hearing.

(c) An inmate shall be assisted in obtaining counsel if the inmate so requests and states the inmate cannot afford counsel.

(d) An inmate shall be informed of the inmate's rights under the law.

(e) An inmate shall be afforded the opportunity to be heard and to present any relevant information.

(f) The Authority retains the discretion to keep the hearing within reasonable limits and to limit the presentation of evidence or the calling of witnesses.

(g) An inmate may be afforded the opportunity, subject to security considerations, to consider and review materials the Authority has that pertain to the fixing of the inmate's minimum term.

(h) The Authority may permit an inmate to waive any or all of inmates rights relative to this section.

(i) There shall be made and maintained a verbatim stenographic or mechanical record of the minimum term proceedings. No record of subsequent discussions and deliberations need to be made.

(j) The State shall have the right to be represented at the hearing by the prosecuting attorney who may present written testimony and make oral comments and the Authority shall consider such testimony and comments in reaching its decision. The Authority shall notify the prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing. The hearing shall be opened to victims or their designees or surviving immediate family members.

(k) The Authority shall prepare and provide the Department of Public Safety, the inmate and the inmate's attorney with a written statement of its decision and order. [Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 706-669)

23-700-23 Factors to be considered in fixing a minimum sentence. The Authority in fixing sentence shall consider:

- (a) The nature and circumstances of the offense and the history and characteristics of the inmate;
- (b) The need for the sentence imposed:
 - (1) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
 - (2) To afford adequate deterrence to criminal conduct;
 - (3) To protect the public from further crimes of the inmate; and
 - (4) To provide the inmate with educational or vocational training, medical care, or other correctional treatment in the most effective manner.

[Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 706-669)

23-700-24 Mitigating factors to be considered in setting a minimum sentence. The following factors may be accorded weight in favor of a lesser minimum sentence of imprisonment

- (a) The inmate's criminal conduct neither caused nor threatened serious harm;
- (b) The inmate acted under a strong provocation;
- (c) There were substantial grounds tending to excuse or justify the inmate's criminal conduct, though failing to establish a defense;
- (d) The victim of the inmate's criminal conduct induced or facilitated its commission;
- (e) The inmate has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
- (f) The inmate's criminal conduct was the result of circumstances unlikely to recur;
- (g) The character and attitudes of the inmate indicate that the inmate is unlikely to commit another crime;
- (h) The inmate is particularly likely to respond affirmatively to parole;
- (i) The inmate cooperated with law enforcement officials in such a manner as to assist in uncovering the offense, arresting and charging others responsible for the offense or in the conviction of others for the offense or other offenses. [Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 706-669)

23-700-25 Aggravating factors to be considered in setting a minimum sentence. The following factors may be accorded weight in favor of a longer minimum sentence of imprisonment:

(a) The inmate's criminal conduct caused or threatened serious harm;

(b) The inmate has a history of prior criminal activity and has not led a law-abiding life for a substantial period of time before the commission of the present crime;

(c) The inmate's criminal conduct was the result of circumstances likely to recur;

(d) The character and attitudes of the inmate indicate that the inmate is likely to commit another crime;

(e) The inmate is unlikely to respond affirmatively to parole;

(f) The inmate is a persistent offender, professional criminal, dangerous person, multiple offender, or offender against the elderly, handicapped or minor, and sentenced to an extended period of imprisonment. [Eff AUG 22 1992 1
(Auth: HRS 353-62) (Imp: HRS 706-669)]

23-700-26 Request for reduction of minimum term(s) of imprisonment; submission guidelines. The Authority may at its discretion reconsider its previously fixed minimum term if (a) an inmate submits a written request and none of the following conditions are present:

(1) The Authority has set the minimum term within six months prior to receipt of the request;

(2) The inmate has served less than one-third of the longest minimum term;

(3) The Authority has considered a request for reduction of minimum within the twelve month period preceding the request;

(4) The inmate is serving a mandatory minimum term;

(5) The Authority has held a parole hearing within the twelve month period preceding to the request; and

(6) The inmate is scheduled for a parole hearing, interview, or an administrative review in the six months period subsequent to the request.

(b) The Director of the Department of Public Safety submits a written request stating the reasons why the Authority should reconsider its previously fixed minimum term.

(c) The Authority may also reduce a minimum term when an inmate has a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent. [Eff AUG 22 1992] (Auth: HRS 353-62)
(Imp: HRS 706-669)

23-700-27 Request for reduction of minimum term of imprisonment; procedure. (a) An inmate, to initiate a request for reduction of minimum term of imprisonment pursuant to 23-900-26(a), must complete and transmit to the Authority a copy of an Authority approved form "Request to Initiate Reduction of Minimum Term." The Authority or its designee will review the request to determine whether the inmate qualifies for reconsideration of previously fixed minimum. When the inmate does not qualify, no further investigation will be conducted. The inmate shall be advised of the determination of the Authority.

(b) When the inmate qualifies for reconsideration of previously fixed minimum, the Authority or its designee shall conduct an investigation. The Authority shall request written information from the Department of Public Safety and the inmate on Authority approved forms. The forms shall be completed and returned to the Authority within sixty days of their receipt. If the inmate fails to return the form within the designated time, the Authority shall discontinue consideration of the request and inform the inmate of its actions.

(c) The Authority will consider the request for reduction of minimum term and render a decision within a reasonable time of receiving the completed forms on the Authority's investigation. [Eff. AUG 22 1992]
(Auth: HRS 353-63) (Imp: HRS 706-669)

23-700-28 Issuance of decision on reduction of minimum terms of imprisonment. (a) The decision by the Authority on a request for reduction of minimum term will be:

- (1) Deny request - minimum term remains appropriate;
- (2) Deny request - administrative review or interview scheduled;
- (3) Defer request - administrative review or interview scheduled;
- (4) Deny request - early parole hearing scheduled; or
- (5) Approve request - minimum term reduced to _____.

(b) The Authority shall prepare and provide the Department of Public Safety and the inmate with a written statement of its decision and order. [Eff. AUG 22 1992]
(Auth: HRS 353-62) (Imp: HRS 706-669)

23-700-29 Reducing previously established minimum terms of imprisonment; guidelines. (a) The Authority may give favorable consideration to a request for a reduction of minimum term if:

- (1) A reduction of the minimum term of imprisonment will not depreciate the seriousness of the offense or promote disrespect for the law; and.

- (2) The inmate has demonstrated over a sustained period of time that the inmate can lead a law-abiding life;
 - (3) The inmate has participated in and benefited from all recommended programming which are likely to enhance reintegration into society as a law-abiding citizen;
 - (4) The Authority has received significant information about the inmate and the crime which was not available at the time the minimum was established, and such information significantly mitigates the nature and circumstance of the crime and the history and characteristics of the inmate;
 - (5) The inmate has received appropriate treatment for a disorder which substantially contributed to the commission of the crime or has a release plan which provides for such treatment in the community;
 - (6) The inmate desires to enter a residential treatment program which is not available while incarcerated; or
 - (7) The court imposed mandatory minimum has been reduced or removed.
- (b) The Authority may also reduce a minimum term when an inmate has a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent. [Eff AUG 22 1992] (Auth: HRS 353-62)
(Imp: HRS 706-669)

SUBCHAPTER 3

PAROLE

23-700-31 Consideration for parole. (a) The Authority shall afford an inmate a parole hearing no later than thirty days prior to the expiration of an inmate's longest minimum term of imprisonment, and on the basis of the hearing grant or deny parole prior to the expiration of the longest minimum term of imprisonment.

(b) When parole is denied, another parole hearing shall be scheduled to take place within twelve months of the last parole hearing date; provided the inmate does not appear before the Authority within the twelve months for fixing of minimum term of imprisonment for another offense. The Authority shall set a parole hearing date at that time.

(c) When parole is granted, it may be rescinded prior to the release of the inmate on parole when the Authority receives new information on the inmate that would be the basis to deny parole. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-68, 706-670)

23-700-32 Parole consideration procedure. (a) The Authority shall serve an inmate with written notice of a parole hearing. The notice shall be served on the inmate and inmate's attorney at least seven days prior to the parole hearing.

(b) The Authority shall inform the inmate in writing of the inmate's right to:

- (1) Consult with any persons the inmate reasonably desires;
- (2) Representation and assistance by counsel at the parole hearing;
- (3) Have counsel appointed to represent and assist inmate if the inmate so requests and cannot afford to retain counsel;
- (4) Be heard and to present any relevant information;
- (5) Assistance from a parole officer in preparing a parole plan and in securing information for presentation to the Authority

(c) The parole plan shall include information on the life the inmate intends to lead, how the needs of the inmate will be addressed, where and with whom the inmate will reside, and occupation or employment. Responsibility for the development and validity of the parole plan rests with the inmate.

(d) The State shall have the right to be represented at the hearing by the prosecuting attorney who may present written testimony and make oral comments and the Authority shall consider such testimony and comments in reaching its decision. The Authority shall notify the appropriate prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing

(e) The Authority shall prepare and provide the Department of Public Safety, the inmate and inmate's attorney with a written statement of its decision and order.

(f) When parole is granted, the Authority shall set the minimum length of parole term the inmate is required to serve. When parole is denied, the decision shall state the reasons for denial and the next parole hearing date.

(g) The Authority shall make a mechanical or verbatim stenographic record of each parole hearing. No record of subsequent discussions and deliberations need be made.

[Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-68, 706-670)

23-700-33 Information considered and criteria utilized in parole consideration. Parole shall not be granted unless it appears to the Authority that there is a reasonable probability that the inmate concerned will live and remain at liberty without violating the law and that the inmate's release is not incompatible with the welfare and safety of society. Parole is not a right of an inmate or parolee. Parole may be denied to an inmate when the Authority finds:

(a) The inmate does not have a viable parole plan;

(b) The inmate has been a management or security problem in prison as evidenced by the inmate's misconduct record;

(c) The inmate has refused to participate in recommended prison programs;

(d) The inmate's behavior in prison is a continuation of the behavior that led to the inmate's imprisonment;

(e) The inmate has a pending prison misconduct;

(f) The inmate does not have the ability or commitment to comply with conditions of parole;

(g) The inmate has pending criminal charges which arose from inmate's current incarceration or last parole;

(h) The inmate has a parole plan for a state that has not accepted the inmate for supervision; or

(i) The inmate has expressed little or no interest in parole. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-67, 353-69, 706-670)

23-700-34 Cash and clothing furnished paroled or discharged prisoners. Upon parole or discharge from the maximum prison sentence, an inmate, who has been committed or sentenced to one year or more, shall be furnished with funds and clothing as authorized by statute.
[Eff AUG 22 1992] (Auth: HRS 353-63, 353-65) (Imp: HRS 353-65, 353-67, 353-69, 706-670)

23-700-35 Actual release on parole. (a) Release on parole shall be conditioned on an inmate's written acceptance of the "Terms and Conditions of Parole" attached to these rules and regulations, and any special terms and conditions the Authority finds necessary to protect the welfare and safety of society and guard against future law violations.

(b) Parole may be deferred by the any member of the Authority should any significant and new information come to the attention of the Authority between the time of the decision to grant parole and the release date.

(c) When parole is deferred, the Authority shall notify the inmate in writing of the reason for deferral and afford the inmate a hearing.

(d) The Authority shall give written notice of the parole or release from parole of an inmate or parolee to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(e) The Authority shall provide written notice to the victim or surviving immediate family member at the address given on the written request for notice or such other address as may be provided by the victim or surviving immediate family member, not less than ten days prior to parole or final unconditional release. However, the Authority, in its discretion, may instead give written notice to the witness or victim counselor programs in the prosecuting attorney's office in the appropriate county.

[Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-66, 353-69, 706-670, 706-670.5)

23-700-36 Procedure following a deferral of parole.

(a) When parole is deferred, a hearing shall be held by the last day of the month following the month of deferral.

(b) At the hearing following deferral of parole, the inmate shall be given the opportunity to be heard, present information, and subject to security considerations, examine written materials.

(c) The inmate shall be given at least seven calendar days written notice of this hearing.

(d) The Authority shall inform the inmate of the inmate's right to consult with any persons the inmate reasonably desires, including the inmate's own counsel.

(e) The Authority shall inform the inmate of the inmate's right to be represented and assisted by legal counsel at the hearing.

(f) The Authority shall inform the inmate that counsel will be appointed to represent and assist inmate if the inmate requests and states the inmate cannot afford to retain counsel.

(g) The Authority shall provide the Department of Public Safety, inmate and inmate's attorney with a written statement of its decision and order rescinding or granting parole.

(h) The written statement shall include the Authority's reason for its decision. [Eff AUG 22 1992]
(Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-68, 706-670)

23-700-37 Computation of maximum parole time. (a) If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Authority but shall not exceed in aggregate length the unserved balance of the maximum term of imprisonment.

(b) Time spent in detention relative to a specific charge prior to commitment by the courts upon conviction of an offense shall be considered pre-confinement credits. Pre-confinement credits shall be deducted from the minimum and maximum terms. This standard applies only to those offenses committed since January 1, 1973. For offenses committed prior to January 1, 1973, pre-confinement credits apply only to the minimum terms.

(c) When a parolee's whereabouts is unknown or the parolee leaves the State without permission, the Authority may suspend that person's parole term until the parolee is in the custody of a law enforcement agency to be returned to the custody of the Department of Public Safety. That period of suspension shall be added to the parolee's aggregate parole term. [Eff AUG 22 1992] (Auth: HRS 353-63, 353-65)
(Imp: HRS 353-65, 353-66, 706-670)

**HAWAII PAROLING AUTHORITY
STATE OF HAWAII
HONOLULU, HAWAII**

ORDER OF PAROLE

FOR:

SID:

The Hawaii Paroling Authority after carefully reviewing all available information concerning the above named prisoner whose minimum sentence will be served on _____ and Term of Parole expires: _____

believes that there is a reasonable probability that the prisoner, if released on parole, will live and remain at liberty without violation of law and the terms and conditions of parole and his/her release is compatible with the welfare and safety of society and himself/herself.

It is ordered, therefore, that the prisoner, subject to the continuing maintenance of good prisoner conduct, be released on parole on _____ or as soon thereafter as he accepts the terms and conditions stated on the reverse hereof and fulfills all pre-release requirements listed as follows:

Parole is effective only to immediate admission into Habilitat.

While on parole and until expiration of his/her maximum parole term or granted a final discharge, he/she shall continue to be in the legal custody and control of the Hawaii Paroling Authority. Should he/she at any time violate any of the terms or conditions of his/her parole, he/she shall be subject to summary return to imprisonment. The prisoner may be required to serve the remainder of his/her term. Should the prisoner violate any of terms and conditions of his/her parole, the Warrant of Arrest issued by the Authority's Administrative Secretary or his/her designee shall constitute certification that the Hawaii Paroling Authority has ordered the recommitment of the prisoner in compliance with statute. Should the prisoner fail to keep the Authority informed as to his/her whereabouts or leaves the State without permission, his/her parole may be suspended by the Authority pending knowledge of his/her whereabouts and return. After such suspension he/she shall be deemed a parole violator and no part of the time during which his/her parole was suspended shall be credited towards his/her parole term.

DATED AT HONOLULU, HAWAII, THIS

ATTEST:

HAWAII PAROLING AUTHORITY

Paroling Authority Administrator

By _____
Chair

TERMS AND CONDITIONS OF PAROLE

The following terms and conditions of parole must be followed. You must read and/or fully understand these terms and conditions and any violation shall subject you to arrest, imprisonment, and possible revocation of your parole. It is your responsibility to ask for clarification of any points or items you are uncertain of or do not fully understand.

1. LAWS AND CONDUCT

- a. You shall comply with and not violate any county, state, or federal ordinances, statutes, and laws.
- b. You shall not have in your possession or control any firearm. In addition, you shall not own or possess any weapons, device, instrument, materials, or substances whether animate or inanimate which in the manner it is used or is reasonably intended to be used or is known to be capable of producing death or bodily harm on other persons.
- c. You shall not threaten to or inflict bodily harm on other persons.
- d. You shall not have in your possession or control any drug which otherwise would be contrary to any law.
- e. You shall immediately notify your parole officer of any contacts you have with any law enforcement office pursuant to an authorized investigation.
- f. You shall not return to or be in the immediate vicinity of any correctional institution unless, permission has first been granted by your parole officer.
- g. You shall not intentionally or knowingly be away from your reported home between the hours of 11:00 p.m. and 6:00 a.m. If it becomes necessary for you to so be away from your home during these hours, you shall seek and receive permission from your parole officer prior to the act. Extremely emergent situations involving personal life, health, or safety may require your absence from your home during those hours without your receiving prior permission and approval. In such case, you shall inform your parole officer immediately after the act.

2. ASSOCIATION: You shall not, without prior approval of your parole officer, associate or be in the company of any person convicted of a criminal acts, including anyone under the active supervision of the Hawaii Paroling Authority.

3. REPORTING: You shall report to and maintain contact with your parole officer in the manner your parole officer specifically prescribes.

4. EMPLOYMENT

- a. You shall actively seek and retain employment. You shall immediately notify your parole officer in the event of termination of employment and be governed by your officer's instructions.
- b. You shall obtain the permission of your parole officer before you accept or change any employment.

5. RESIDENCE: You shall always keep your parole officer informed as to your whereabouts. You shall notify and obtain the permission of your parole officer before changing your place of residence. Such notification shall include exact new address and, if available, telephone number. Your place of residence must meet with the approval of your parole officer.

6. TRAVEL: You shall not leave the State or the island in which you reportedly reside without first obtaining permission from your parole officer.

7. OBLIGATIONS: You shall support and maintain your legal dependents.

8. SPECIAL CONDITIONS: SEE ATTACHED SPECIAL CONDITIONS OF PAROLE.

ACCEPTANCE BY PRISONER. I have read or had read and explained to me the foregoing terms and conditions of parole, including any special conditions. I fully understand all of the terms and conditions and I knowingly and willfully agree to abide by and follow them. I further understand that if I violate or fail to comply with any of these terms and conditions, including special conditions, I may be reimprisoned. I further accept and acknowledge receipt of a copy of this document for my personal use and continued reference.

Witness's Signature - Title - Date

Prisoner's Signature - Date

SUBCHAPTER 4

REVOCATION OF PAROLE

23-700-41 General procedure. (a) The Authority is authorized to revoke parole granted an inmate.

(b) The Administrative Secretary is authorized to issue a warrant of arrest for any parolee. A warrant of arrest shall not be issued unless there is probable cause to believe that the terms and conditions of parole have been violated by the parolee.

(c) Upon execution of a warrant and reimprisonment of the parolee, a preliminary hearing to be conducted by an impartial hearings officer shall be scheduled unless the parolee waives the parolee's right to such a hearing. The preliminary hearing shall be for the purpose of determining if there is probable cause to believe that the arrested parolee violated the terms and conditions of parole. A parole revocation hearing may be held without arresting and reimprisoning the parolee. Then no preliminary hearing will be held. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-66, 706-670)

23-700-42 Preliminary hearing; procedure. (a) The preliminary hearing shall be conducted within five working days of the parolee's arrest and return to the custody of the Department of Public Safety.

(b) The hearings officer shall be a parole officer or employee of the Authority who is not the issuer of the warrant, directly assigned to the case, the reporter of the parole violation, nor recommending revocation. An Authority member may not conduct a preliminary hearing.

(c) The parolee shall receive prior written notice of the hearing. The notice shall contain the purpose, the allegations of violation of the terms and conditions of parole, the right of the parolee to waive the hearing and remain in prison until the parole revocation hearing, and the rights of the parolee as provided in paragraphs (a) and (b) of the following section 23-900-43. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-66, 706-670)

23-700-43 Preliminary hearing; procedure. (a) The parolee may appear at the preliminary hearing and present relevant evidence including witnesses and documents relevant to the allegations of violation of the terms and conditions of parole.

(b) The parolee may question adverse witnesses and challenge any documents, except when the hearings officer finds the safety of a witness would be jeopardized, the hearings officer may accept testimony from such a witness without the witness being questioned by the parolee. The identity of such a witness need not be disclosed to the parolee's or inmate's attorney

(c) The hearings officer shall at the conclusion of the hearing and on the evidence presented, make a determination and render a decision as to whether there is a probable cause to believe the parolee violated the terms and conditions of parole. When the hearings officer finds probable cause that the parolee violated the terms and conditions of parole, the parolee shall remain confined.

(d) When the hearings officer finds no probable cause that the parolee violated the terms and conditions of parole, the hearings officer shall dismiss the warrant and return the parolee to the status the parolee had prior to reimprisonment.

(e) In all cases, the hearings officer shall make a written summary of the hearing, including the reasons for the hearings officer's decision and evidence relied upon.

(f) When a parolee is arrested and confined pursuant to an Authority warrant or preliminary hearing decision, the Authority shall hold a revocation hearing within sixty calendar days after the date of the arrest. If the parolee is arrested out of state, the sixty calendar days will begin at the time the parolee is returned to the State of Hawaii.

(g) The parolee may waive any of the parolee's rights under this section [Eff AUG 22 1992] (Auth: HRS 353-62, 353-63) (Imp: HRS 353-65, 353-66, 706-670)

23-700-44 Revocation of parole hearing; procedure.

(a) The Authority shall serve a written notice to the parolee of a parole revocation hearing no later than seven days prior to the hearing. The notice shall include:

- (1) Purpose of the hearing;
- (2) Alleged violation(s) of the terms and conditions of parole;
- (3) The parolee's rights as provided in (c), (d), and (e) of this Section;
- (4) The consequences of a parole revocation.

(b) The Administrative Secretary shall disclose to the parolee the evidence on the violation of the terms and conditions of parole prior to the parole revocation hearing; provided that evidence the Administrative Secretary finds may jeopardize the safety of a witness may be withheld.

- (c) The parolee shall be:
- (1) Permitted to consult with any person the parolee reasonably desires, including the parolee's own legal counsel;
 - (2) Permitted to be represented by legal counsel at the hearing; and
 - (3) Assisted in obtaining legal counsel and have legal counsel appointed for the parolee if parolee so requests and cannot afford one.
- (d) The parolee shall have the right to confront and cross-examine adverse witnesses, unless the Authority specifically finds good cause for not allowing confrontation.
- (e) The parolee shall be afforded the opportunity to be heard in person and present witnesses and documentary evidence.
- (f) The parolee and persons who testify may be required to do so under oath.
- (g) The Authority shall attempt to obtain direct testimony and if necessary, may use its subpoena powers. If obtaining direct testimony is neither possible nor practical, the Authority may consider evidence that may reasonably be relied upon including depositions, affidavits, parole records, hearsay, or other materials that may not be admissible in a criminal trial.
- (h) A violation of parole requires a finding by the Authority that there is a preponderance of evidence that the parolee has violated the terms and conditions of parole. When there has been a finding by the Authority of a parole violation, the Authority may revoke parole, defer a revocation of parole, or continue the inmate on parole.
- (i) When parole is not revoked, the Authority shall arrange to have the parolee released from any incarceration and assist the parolee in returning to the parolee's status prior to revocation proceedings.
- (j) When parole is revoked, the parolee and the parolee's counsel shall be orally informed at that time and served with a written statement by the Authority which shall include the evidence relied upon and reasons for the revocation.
- (k) The Authority may defer a revocation of parole for a period not to exceed twelve months on the condition a parolee does not violate any further conditions of the terms and conditions of parole. If there is no new violation during this term, parole shall not be revoked. A parolee shall not be imprisoned by the Authority during this period of deferral except by warrant issued pursuant to a new violation of the terms and conditions of parole.
- [Eff AUG 22 1992] (Auth: HRS 353-62, 353-63) (Imp: HRS 353-65, 353-66, 706-670)

SUBCHAPTER 5

DISCHARGE FROM SENTENCE

23-700-51 Discharge. (a) An inmate or parolee shall be discharged from the inmate's or parolee's sentence upon full service of that sentence.

(b) An inmate or a parolee may be discharged by the Authority prior to service of the inmate's or parolee's full maximum term. A discharge relieves a person from the sentence. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-70, 706-670)

23-700-52 Criteria for early discharge. Eligibility for an early discharge from a sentence requires the following: (a) The parolee has demonstrated for a sustained period of time that the parolee is unlikely to commit another crime and the parolee's discharge is compatible with public safety.

(b) The parolee is employed and has maintained gainful employment;

(c) The parolee no longer needs correctional treatment or programs or is receiving appropriate treatment or participating in appropriate programs; and

(d) There are no criminal charges pending against parolee.

(e) Any restitution ordered by the court has been paid in full. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-70, 706-670)

23-700-53 Discharge after five years of parole. When a parolee has been on parole status for five consecutive years, and not received a final discharge from sentence, the Authority shall consider the parolee for discharge on the completion of the fifth year and annually thereafter until the parolee is discharged or serves the parolee's full maximum term. Pardon recommendation to the Governor shall be a part of the consideration for final discharge. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-70, 706-670)

23-700-54 Notification of discharge. When a person is discharged from a sentence, the Authority shall inform in writing the court which convicted and sentenced the person discharged and to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice. [Eff AUG 22 1992] (Auth: HRS 353-62, 353-65) (Imp: HRS 353-65, 353-70, 706-670.5)

SUBCHAPTER 6
COMMUTATIONS AND PARDONS

23-700-61 Pardons. All applications for pardon received and considered by the Authority shall be on application forms approved by the Governor.

[Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 353-72)

23-700-62 Commutations. The Authority shall prepare an application for the Governor to commute the sentence of an inmate serving life imprisonment without parole to life imprisonment with parole at the end of twenty years of imprisonment and completion of any mandatory minimum term of imprisonment. Within six months of the commutation the Authority shall hold a hearing to determine the minimum term the inmate must serve before being considered for parole.

[Eff AUG 22 1992] (Auth: HRS 353-62)
(Imp: HRS 353-62)

SUBCHAPTER 7

INQUIRIES, PUBLIC INFORMATION

23-700-71 Inquiries. Requests for information from the Authority shall be referred to the Chairman of the Authority and shall be approved or denied by the Chairman subject to the provisions of Chapter 92 E of the Hawaii Revised Statutes (Fair Information Practice).
(Eff AUG 22 1992 (Auth: HRS 353-62) (Imp: HRS 353-62)

23-700-72 Press. The Chairman of the Authority may allow members of the press to attend Authority hearings on the fixing of a minimum term of imprisonment, revocation of parole and parole when the Chairman finds the public interest would be served. [Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 353-62)

SUBCHAPTER 8

RULES OF CONSTRUCTION

23-700-81 Public safety. These rules and regulations shall be construed in a manner compatible with the welfare and safety of society. [Eff AUG 22 1992] (Auth: HRS 353-62) (Imp: HRS 353-62, 353-69)

23-700-82 Supersession. These rules and regulations supersede all prior rules and regulations of the Hawaii Paroling Authority." [Eff AUG 22 1992 (Auth: HRS 353-62) (Imp: HRS 353-62, 353-65)]"

2. The adoption of chapter 23-700, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, were adopted _____, 1992, and filed with the Office of the Lieutenant Governor.

Georgina M. Yuen
Georgina M. Yuen, Chairperson
Hawaii Paroling Authority

George W. Sumner
George W. Sumner, Director
Department of Public Safety

Approved as to form:

Simon Wan
Deputy Attorney General

August 4, 1992
Date

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Notice of Public Hearing published in the Honolulu Star Bulletin on May 22, 1991.

Public Hearing held in Honolulu, Hawaii June 21, 1991 in the Kuhina Nui Room, 2nd Floor, Kamamalu Building, 250 South King Street, Honolulu, Hawaii, at 9:00 a.m.

APPROVED:

John Waihe
Governor of Hawaii

Date: AUG 12 1992